

BOARD OF APPEALS CASE NO. 4941

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BEFORE THE

APPLICANT: Mamma Maria's, Inc.

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to permit an
existing carry-out restaurant in the VB/VR
District; 3724-A Norrisville Road,
Jarrettsville**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 7/14/99 & 7/21/99

HEARING DATE: September 27, 1999

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Record: 7/16/99 & 7/23/99

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Mamma Maria's Inc., is seeking a special exception pursuant to Section 267-53(H)(7) of the Harford County Zoning Code to convert an existing pizza carry out into a sit-down restaurant. The property is zoned VB Village Business.

The subject parcel is located at 3724-A Norrisville Road, Jarrettsville, Maryland 21084 and is more particularly identified on Tax Map No. 32, Grid No. 2A, Parcel 132. The property consists of 3.04 acres, more or less, on which a small commercial shopping center, known as Manorwood Center, already exists. The shopping center consists of two (2) brick buildings which total 14,200 square feet of commercial space. The Applicant, Mamma Maria's, and a Chinese carry-out restaurant currently occupy the smaller of the two buildings on the property. The second building currently contains a grocery store and vacant space. The Applicant proposed to expand its carry-out business, which utilizes approximately 1,334 square feet, to a full eat-in restaurant utilizing up to 2269 square feet. Applicant moved to amend the application to increase the square footage requested to a total of 3,400 square feet. The proposal will not increase the size of the existing building, only increase the amount of square footage occupied by the Applicant.

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Two witnesses testified on behalf of the Applicant. George Almiroudis, a shareholder and employee of Mamma Maria's, testified that Mamma Maria's has been operating its carry-out business at the subject location for approximately one and a half years. The hours of operation are from 11 a.m. to 11 p.m., seven days a week. No additional parking is needed for the expanded restaurant and the same type of food would be available at the restaurant as is offered through the carry-out. The proposed restaurant would provide seating for approximately 40 patrons. The Applicant had reviewed the Staff Report prepared by Planning and Zoning and agreed that he would comply with all recommended conditions, including obtaining all necessary permits and inspections for any interior renovations to the existing space.

Denis Canavan, who was qualified as an expert planner, testified that he personally visited the site and that the Staff Report from the Department of Planning and Zoning was accurate. He further testified that the business qualified as a restaurant and that the business complies with all the requirements of the Zoning Code. In his opinion, there would be no adverse impact to the neighboring community. In regard to whether the proposal would comply with the standards set forth in Code Section 267-9(I), Mr. Canavan testified that: the restaurant is a permitted use in the Village Business District and is of a scale appropriate to serve a rural or agricultural community; the hours are consistent with other businesses in the area; it is located on an arterial road and would have no adverse impact on traffic conditions in the area; the restaurant would improve the shopping center from an economic standpoint; there would be no added or unusual odors, dust, gas, smoke, fumes, vibration, glare or noise; required services are available and already utilized by the carry-out business; and, the business is compatible with the requirements of the Code. In addition, Mr. Canavan testified that there do not appear to be any environmental issues and there are no cultural or historic landmarks which would be affected by the proposed use. Therefore, based upon the witness' expertise, he believed there would be no adverse effect as a result of the Applicant's proposal.

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The Department of Planning and Zoning has recommended conditional approval of the requested Special Exception, contingent upon the Applicant obtaining all necessary permits and inspections. Anthony McClune, testifying for the Department, indicated that the proposed amendment for up to 3,400 square feet would be recommended. To his knowledge, there were no additional concerns for the Health Department that would affect this recommendation. There were no persons in attendance who opposed the request.

CONCLUSION:

Section 267-38(A) of the Harford County Zoning Code defines the purpose of the Village Business District as follows:

“This district is intended to provide business services to rural areas and to preserve and enhance the character and function of long-established rural settlements. This district compliments the VR District by providing a mix of business and residential uses at an appropriate scale.”

Section 267-33, Table 1 of the Code provides that a restaurant is a permitted use in a Village Business District if approved as a Special Exception.

Section 267-53(H)(7) of the Code provides that restaurants may be granted as a special exception in a VB District provided that “ the parking and access requirements of Part 1 shall apply and the location of the restaurant allow direct access to an arterial or collector road.”

In addition, Section 267-9(I), “Limitations Guides and Standards”, sets forth certain standards and guidelines which must be considered before a request for a special exception may be granted. Specifically, the application cannot be approved if the proposed use or change of use “would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood.”

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In order to make such a determination, the following factors are to be considered:

- 1) The number of persons living or working in the immediate area.**
- 2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- 3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- 4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**
- 5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**
- 6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**
- 7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**
- 8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**
- 9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.**
- 10) The preservation of cultural and historic landmarks."**

(See Code Section 267-9(l))

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In the case of Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), the Maryland Court of Appeals set forth the standard to be used in determining the validity of a special exception in a designated zoning district. Once a certain use has been enumerated by the legislative body, there is a presumption that the exception is valid "absent any facts or circumstances negating the presumption. The duties given to the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan." 291 Md. at 11-12, 432 A.2d at 1325. The test for determining the existence of a sufficient "adverse effect" to justify a denial of the request is "whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." 291 Md. At 15, 432 A.2d at 1327.

As noted above, the Harford County Code permits a restaurant as a special exception use in a Village Business zone if the requirements of Section 267-53(H) are met. Mamma Maria's had already been approved as a carry-out restaurant in that location. The Hearing Examiner finds that the Applicant has satisfied the requirements of the Code. Furthermore, the evidence introduced at hearing demonstrated that any additional adverse impact created by the conversion of the restaurant to a "sit-down" facility in space already available and constructed within the existing shopping center would be minimal at best. The Hearing Examiner can find no evidence that this particular use at this particular location would have any adverse impacts above and beyond those normally associated with such a use, regardless of its location within the zone. The size and scale of the proposed restaurant is compatible with the stated purpose of the Village Business District.

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Accordingly, the Hearing Examiner recommends approval of the requested Special Exception, subject to the following conditions:

1. The Applicant obtain all necessary permits and inspections for the requested restaurant and for the interior renovations to the existing building.
2. The Applicant shall meet any additional requirements which may be imposed by the Health Department.

Date

October 27, 1999

Valerie H. Twanmoh

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Zoning Hearing Examiner